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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

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MICHAEL L. WILLIAMS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLA

In Re:)
)
Oklahoma Fixture Company, Inc.) Case No. 03-00476-M
) Chapter 11
)
Debtor.)
)
In Re:) Case No. 03-00493-M
) Chapter 11
Oklahoma Installation Company, Inc.)
) Administratively Consolidated
) Under Case No. 03-00476-M
Debtor.)

**MOTION TO SELL PRIMARY BUSINESS ASSETS FREE AND
CLEAR OF ALL CLAIMS, LIENS, INTERESTS AND ENCUMBRANCES
AND ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS
PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE AND RULE
6006 OF THE BANKRUPTCY RULES, FIX CURE AMOUNTS THEREUNDER
AND NOTICE OF OPPORTUNITY FOR HEARING**

Oklahoma Fixture Company, Inc. ("OFC") and Oklahoma Installation Company, Inc. ("OIC"), Debtors-In-Possession herein (collectively, the "Debtors"), respectfully move this Court for the entry of an order authorizing the sale of the Debtors' business assets comprised of the real estate, vehicles, equipment, inventory, furniture, accounts receivables, intellectual property, certain other business assets and the assignment of certain executory contracts and unexpired leases, all as more particularly described in the Sale Agreement (as defined hereinbelow). The assets being sold and assigned pursuant to this Motion are hereafter referred to as the "Sale Assets". In support of this Motion the Debtors present to the Court and the parties in interest the following:

Jurisdiction

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§1408 and 1409.

2. Venue of these cases and the within Motion is proper in this District pursuant to 28 U.S.C. §§1408 and 1409.

3. The statutory predicate for the relief sought herein is §§363 and 365 of the Bankruptcy Code.

Factual Background

4. On January 31, 2003, OFC filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. On February 3, 2003, OIC filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The two filing dates are collectively referred to as the "Petition Dates". Since the Petition Dates, the Debtors have continued to operate their businesses and manage their properties as Debtors-In-Possession pursuant to §§1107 and 1108 of the Bankruptcy Code. No trustee, examiner or committee has been appointed in these Chapter 11 cases.

5. OFC is in the business of designing, manufacturing and installing fixtures for commercial businesses. OIC is in the business of installing fixtures for commercial businesses.

6. The F&M Bank & Trust Company ("F&M") claims that it holds valid, enforceable and allowable claims against Debtors, as defined in §101 of the Bankruptcy Code, as of the Petition Date in an aggregate amount equal to approximately \$17,000,000.00 in unpaid principal, plus accrued but unpaid interest, fees and other obligations (including as yet unfunded letter of credit obligations) (the "Pre-Petition Secured Indebtedness"). F&M claims that the majority of the Sale

Assets secure repayment of the Pre-petition Secured Indebtedness. F&M has also made available to Debtors post-petition financing in the amount of \$5,500,000.00 secured by all assets of Debtors pursuant to properly entered orders of this Court (the "Post-Petition Secured Indebtedness"). The total of the Pre-Petition Secured Indebtedness and the Post-Petition Secured Indebtedness is referred to herein as the "F&M Secured Indebtedness". The only other creditor known to the Debtors that asserts a lien on specific items of equipment being sold is CMS North America ("CMS") that claims a purchase money security interest in 2 R4CU CNC Routers.

7. The Debtors have received an offer from Penloyd, LLC, an Oklahoma Limited Liability Company (the "Buyer"), to purchase the Sale Assets. Buyer's offer is memorialized in the Asset Purchase Agreement dated as of May 15, 2003, between the Debtors and Buyer (the "Sale Agreement").¹ The Sale Agreement provides for a purchase price of \$12,700,000.00 of the Pre-petition Secured Indebtedness plus the balance at closing of the Post-petition Secured Indebtedness less \$1,000,000.00 all to be paid as an assumption of the F&M Secured Indebtedness, plus the assumption of certain Ordinary Course of Business Expenses and post-closing expenses related to the Purchased Contracts as those terms are defined in the Sale Agreement. The Sale Agreement is attached hereto as Exhibit "A" and is incorporated herein by reference. The procedures governing the sale of the Sale Assets as contemplated herein are governed by the order entered by this Court on the 9th day of May, 2003 wherein the Court granted the motion filed by the Debtors seeking an order establishing certain buyer bidding and sale procedures (the "Sale Procedures") for the proposed sale of the Sale Assets (the "Sale Procedures Order").

¹ The description of the Sale Agreement contained herein is for summary purposes only. The Sale agreement contains the definitive agreement between and among the Debtors and Buyer and is the controlling agreement in the unlikely event a conflict exists. Unless otherwise stated, capitalized terms have the meanings ascribed to them in the Sale Agreement.

8. The Buyer has the financial ability to consummate the purchase of the Sale Assets pursuant to the terms of the Sale Agreement upon entry of an order by this Court.

9. On April 1, 2003, the Debtors filed a separate motion seeking the approval of the assumption of certain executory contracts and unexpired leases (the "Assumption Motion"). Certain of the unexpired leases and executory contracts assumed by the Assumption Motion are intended to be assigned as a part of the relief requested herein (the "Assumed Contracts").

Relief Requested

10. By this Motion, the Debtors seek entry of an order (i) authorizing the Debtors to sell the Sale Assets free and clear of liens, claims, interests and encumbrances (except the permitted or assumed liens described in the Sale Agreement and the WMA Liens (as defined hereinbelow)) to Buyer, subject to the terms of the Sale Agreement; (ii) approving the assignment of the Assumed Contracts and (iii) approving the assumption and assignment of other executory contracts and unexpired leases and fixing the cure amounts thereunder (all of the executory contracts and unexpired leases referred to in sub-paragraphs (ii) and (iii) are referred to as the "Purchased Contracts").

11. In the exercise of their business judgment, the Debtors believe that the proposed sale is in the best interest of creditors of the Debtors' estates.

Terms of the Sale Agreement

12. The Debtors have reached an agreement to sell and transfer the Sale Assets (including the Purchased Contracts) to Buyer free and clear of all liens, claims and encumbrances (except the WMA Liens (as defined hereinbelow) and certain permitted or assumed liens) pursuant to §363(b) of the Bankruptcy Code. The Sale Assets do not include any assets of the Debtors not described in the

Sale Agreement such as cash, an aircraft, a boat, certain avoidance actions (other than avoidance claims against certain critical vendors as identified in Schedule 4.1.12 of the Sale Agreement) and other claims and causes of action belonging to the Debtors' estates. A detailed listing of the Sale Assets is set forth in the Sale Agreement. This sale contemplates the sale of the Debtors' property interest, if any, in any property, whether tangible or intangible, associated with any of the Purchased Contracts.

13. The Sale Assets include real property consisting of approximately 14.973 acres located in Warren County, Kentucky owned by OFC, together with all improvements and fixtures thereon, commonly known as the "Woodwork of Mid-American Building" or "WMA Building" (the "WMA Real Property"). The legal description of the WMA Real Property is found in item 6, Schedule 1.1 of Sale Agreement. The Buyers desire to purchase the WMA Real Property subject to the valid liens of record held by AmSouth Bank and CMS (the "WMA Liens"), but do not by the purchase intend to assume, and are specifically not assuming, any obligations, claims or liabilities associated with the WMA Real Property or the WMA Liens. The Debtors are not proposing to sell the WMA Real Property free and clear of the WMA Liens, but rather are selling the WMA Real Property subject to the WMA Liens. The sale proposed hereby is free and clear of any liens subordinate to the WMA Liens. Debtors allege the value of the WMA Real Property is significantly less than the WMA Liens and that any liens subordinate and inferior to the WMA Liens are not entitled to any proceeds from this sale.

14. Pursuant to the Sale Agreement, the Debtors and Buyer hereby seek authority to assume pursuant to 11 U.S.C. §365 and thereafter assign to Buyer the Purchased Contracts. A listing of the Purchased Contracts is found at Schedule 2.1(e) of the Sale Agreement. Approval of this

Motion and the Assumption Motion shall constitute the Court's approval of the assumption and assignment of the Purchased Contracts. The Purchased Contracts will be assigned to Buyer as part of the sale of the Sale Assets pursuant to the Sale Agreement.

15. The Buyers are specifically not assuming and the Debtors are specifically not assigning any collective bargaining agreements from the Debtors to the Buyers. The sale proposed hereby is free and clear of any claims, liens, encumbrances, rights or obligations associated with any and all collective bargaining agreements.

16. The Sale Agreement provides for a purchase price of \$17,200,000.00 (subject to certain adjustments as provided in §2.3 of the Sales Agreement) that is paid by the assumption of portions of the F&M Secured Indebtedness. Specifically, the Buyer is assuming \$12,700,000.00 of the Pre-petition Secured Indebtedness and approximately \$4,500,000.00 of the Post-petition Secured Indebtedness.

17. Except for the portions of the F&M Secured Indebtedness referred to in paragraph 16 and the "Ordinary Course of Business Expenses"², unless otherwise provided in the Sale Agreement the Buyer shall not assume or become liable for any liens, claims, interests and/or encumbrances relating to the Sale Assets. Any such liens, claims, interests, and/or encumbrances not assumed by the Buyer shall attach to any cash proceeds of the sale, provided that the WMA Liens shall remain attached to the WMA Real Property. Further, the Buyer shall not be liable or in any manner responsible for any claims against the Debtors, whether or not such claim(s) have been actually

² "Ordinary Course of Business Expenses" is defined in the Sale Agreement and means the following post petition expenses that would normally be entitled to an administrative priority under the Bankruptcy Code in the Bankruptcy Cases and that arise in the ordinary course of Sellers' businesses and are unpaid as of the Closing Date: unpaid wages for no more than fourteen (14) work days, unpaid utility costs which are not yet billed, unpaid invoices for ordinary course goods and services provided to Sellers within the thirty (30) day period preceding the Closing Date; provided, however,

asserted in writing, a pending legal action or otherwise, for any alleged violations of the National Labor Relations Act by the Debtors, their officers, employees, agents or their predecessors in interest.

18. The Debtors' and Buyer's obligations to consummate the Sale Agreement are subject to the conditions set forth in the Sale Agreement, the Sale Procedures Order and the approval of this Court pursuant to this Motion.

19. The Sale Agreement and the Sale Procedures Order obligate the Debtors to pay Buyer a Termination Fee in the amount of \$225,000.00 if, and only if, the Debtors file a Motion seeking approval of a sale to Buyer utilizing the Sale Agreement and the Sale Assets are sold to another purchaser for an amount in excess of the sale price stated in the Sale Agreement, all as more fully described in the Sale Agreement. The Termination Fee is Buyer's exclusive remedy in the event a sale is not consummated with Buyer as contemplated in the Sale Agreement.

The Auction Procedure

20. The Sale Procedures Order specifies the manner and means of conducting the sale of the Sale Assets whereby the Buyer's offer to purchase the Sale Assets pursuant to the Sale Agreement is subject to a bidding process, referred to as the "Auction." The Auction shall be conducted as set forth in the Sale Procedures Order, a copy of which is attached hereto as Exhibit "B". If the successful bidder at the Auction is an entity other than Penloyd, LLC, an Oklahoma Limited Liability Company, such entity shall become the "Buyer" for purposes of this Motion. As provided in the Sale Procedures Order, the Auction and sale of the Sale Assets shall be governed by the following procedures:

the amount of such expenses to be assumed shall not exceed the aggregate of \$500,000.00

(a) Any entity that desires to submit a competing bid for the Sale Assets hereafter shall be permitted to conduct reasonable due diligence prior to the Sale Hearing (as hereafter defined) of the Debtors' books and records subject to executing an appropriate confidentiality agreement.

(b) Any entity that desires to submit a competing bid for the Sale Assets must file with the Court and serve on counsel to the Debtors, Mark A. Craige, Esq. of Morrel, West, Saffa, Craige & Hicks, Inc., 5310 East 31st Street, Suite 1100, Tulsa, Oklahoma 74135; counsel to F&M, J. Schaad Titus, Esq. of Barkley, Titus, Hillis & Reynolds, 15 East 5th Street, Suite 2750, Tulsa, Oklahoma 74103 and Neal Tomlins, Esq. of Tomlins & Goins, 2100 South Utica Avenue, Suite 300, Tulsa, Oklahoma 74114 and counsel for the Buyer, Steven W. Bugg, McAfee & Taft A Professional Corporation, Tenth Floor, Two Leadership Square, 211 North Robinson, Oklahoma City, Oklahoma 73102 and John M. Ramirez, Venable, Baetjer and Howard, LLP, Two Hopkins Plaza, Suite 1800, Baltimore, Maryland 21201, its written bid on or before 12:00 Noon. C.S.T. of the day two (2) business days preceding the Auction.

(c) Such written bid must contain evidence satisfactory to Debtors of the bidder's ability to consummate the sale transaction by the Closing Date set forth in the Sale Agreement, including evidence of adequate financing. Such written bid shall be accompanied by a cashier's check or bank draft in the amount of \$50,000.00, which sum shall constitute an earnest money deposit for the ultimate purchase price. Such deposit shall be non-refundable in the event that such bidder is the successful bidder at the sale hearing but fails to close its purchase of the Sale Assets, unless such failure is the result of a non-curable material breach by Debtors under an agreement approved by the Court ("Non-Curable Breach"). Except as provided herein, all earnest money deposits (including the earnest money deposit of Buyer under the Sale Agreement) shall be immediately refunded to all unsuccessful bidders.

(d) All competing bids that satisfy these procedures shall be reviewed at the Auction and the highest bid will be presented to the Court at the hearing to consider the Sale Motion (the "Sale Hearing"). No additional bids will be accepted or considered by the Court at the Sale Hearing.

(e) The competing bidder (if any) who first serves notice (as specified in Subparagraph 20(b) above) of its intent to submit a competing bid shall make the initial competing bid at the Auction of not less than \$275,000.00 more than the purchase price set forth in the Sale Agreement. After the initial competing bid has been submitted, all subsequent bids shall be made in cash increments of not less than \$50,000.00.

(f) If the winning bidder fails to consummate the proposed transaction on or before the Closing Date as defined in the Sale Agreement, Debtors shall be authorized to consummate the proposed sale transaction with the next highest bidder without the need for an additional hearing or order of Court.

(g) All bids are submitted on the condition that if the winning bidder fails to close for a reason other than a Non-Curable Breach as defined in the Sale Agreement, the Debtors may accept the next highest offer within a reasonable time after the winning bidder fails to

close and the next highest bidder's offer is not deemed revoked or withdrawn by the original acceptance of the winning bidder's offer.

(h) In the event that a bidder other than Buyer is determined to be the winning bidder at the Auction and the winning bid is approved by the Bankruptcy Court and results in an actual sale of the Sale Assets in favor of such winning bidder, then Buyer shall be paid a Termination Fee of \$225,000.00 in cash on the closing date of the sale to the winning bidder.

(i) Objections to the Sale Motion must be served on counsel for the Debtors, counsel for F&M, and counsel for Buyer on or before eight (8) business days before the Sale Hearing or such objection may not be considered by the Court.

(j) All bids submitted for the Sale Assets must contemplate a cash purchase. In the event that the Buyer has been able to obtain financing from F&M for the purchase of the Sale Assets or F&M has agreed to an assumption of all or a portion of its indebtedness secured by the Sale Assets, no other bidder may rely upon such bidder's ability to obtain financing from F&M or assume any indebtedness in submitting its bid. F&M's willingness to finance a proposed purchaser or allow assumption of any indebtedness shall be evaluated on a case by case basis and F&M has no obligation to finance any potential purchaser or allow assumption of any of F&M's existing indebtedness. Any requests for financing from F&M must be made directly to F&M. F&M reserves its right to credit bid for the Sale Assets pursuant to § 363(k) of the Bankruptcy Code.

21. Buyer is purchasing the Sale Assets with limited representations and warranties typical to a transaction of this nature being conducted in the context of an insolvent seller as facilitated by these Bankruptcy cases. Details of such representations and warranties are set forth in detail in Article IV of the Sale Agreement. Except for the covenants set forth in Article VIII of the Sale Agreement, none of the representations, warranties, covenants and agreements contained in the Sale Agreement shall survive the closing of the sale of the Sale Assets.

22. Buyer is purchasing the Sale Assets in good faith. The Sale Agreement is the product of substantial, extensive and good faith negotiations that were conducted at arm's length and without collusion. Accordingly, Buyer is entitled to the protection of §363(m) of the Bankruptcy Code.

**The Debtors' Sale of the Business Assets to Buyer Should Be
Approved Pursuant To Section 363(b)(1) of the Bankruptcy Code**

23. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate”.

11 U.S.C. §363(b)(1). Courts have uniformly held that approval of a proposed sale of property pursuant to §363(b) of the Bankruptcy Code is appropriate if a Court finds that the transaction represents a reasonable business judgment on the part of the debtor or trustee. See *Institutional Creditors of Continental Air Lines, Inc. vs. Continental Air Lines, Inc. (In re Continental Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983); *Stephens Industries, Inc. vs. McClung*, 789 F.2d 386, 391 (6th Cir. 1986); *In re Inosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335 (Bankr. D. Del. 1987) and *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (Bankr. D. Del. 1991).

24. Additionally, prior to and after enactment of the Bankruptcy Code, Courts have permitted a proposed sale of all or substantially all the assets of a debtor outside the ordinary course of business if such a sale is necessary to preserve the value of assets for the estates, their creditors or interest holders. See *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983); *In re Equity Funding Corp. of America*, 492 F.2d 793, 794 (9th Cir. 1974), cert. denied, 419 U.S. 964 (1974) (“Other circuits have recognized the power of the bankruptcy court under Chapter X to authorize a sale of the debtor’s property under less than emergency conditions where such sale is necessary to avoid deterioration in the value of the assets”).

25. The Debtors submit that the proposed sale of the Sale Assets is a reasonable business decision in light of the circumstances and is in the best interest of the estate and its creditors.

Further, the Debtors submit that the proposed sale presents the best opportunity to realize the maximum value of the estates' assets for distribution to creditors and is necessary to preserve the value of the estates' assets for the estate and their creditors.

**The Debtors' Sale of the Sale Assets to Buyer
Should be Approved Pursuant to Section 363(f) of the Bankruptcy Code**

26. Pursuant to §363(f) of the Bankruptcy Code, a Debtors may sell property under §363(b) free and clear of any interest in such property if:

- (a) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (b) such entity consents;
- (c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (d) such interest is in bona fide dispute; or
- (e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. §363(f).

27. The Debtors believe they will have the consent of all creditors claiming liens upon the proceeds of the sale of the Sale Assets in satisfaction of §363(f)(2) of the Bankruptcy Code at the hearing on the Motion.

Assumption and Assignment of Certain Executory Contract

28. By this Motion and the Assumption Motion, and pursuant to §365 of the Bankruptcy Code and Rule 6006 of the Federal Rules of Bankruptcy Procedure, the Debtors seek approval of the assumption of the Assumed Contracts.

Cure Payments Related to the Assumption of Certain Executory Contracts

29. Payment of amounts to cure defaults pursuant to §365(b) of the Bankruptcy Code will be made by the Debtors in connection with the assumption and assignment of the Purchased Contracts. Except as set forth in the Assumption Motion, the Debtors believe that the Purchased Contracts do not require any cure payments pursuant to §365(b) of the Bankruptcy Code. Accordingly, the Debtors request that the Court determine that no cure obligation exists as to the Purchased Contracts except as provided in the Assumption Motion. To the extent that there are any timely filed and served written objections to the proposed cure amounts, the Debtors request that the Court determine the disputed cure amount at the hearing set on this Motion.

Argument and Authorities for Assumption and Assignment

30. The allegations of the Assumption Motion are incorporated herein by reference. Section 365 of the Bankruptcy Code authorizes the assumption of an executory contract or unexpired leases subject to Court approval and the satisfaction of any defaults under the applicable executory contract or unexpired lease. Moreover, §365 of the Bankruptcy Code authorizes the assignment of an executory contract or unexpired leases subject to Court approval and adequate assurance of future performance by the assignee of such contract.

31. The standard to determine whether an executory contract or unexpired leases should be assumed is whether in the Debtors' "business judgment" such assumption is in the Debtors' economic best interest. See *In re King Resources Company*, 482 F.2d 552 (10th Cir. 1973); *In the Matter of Tilco, Inc.*, 558 F.2d 1369 (10th Cir. 1977); *Sharon Steel Corp. vs. National Fuel Gas Distrib. Corp. (In re Sharon Steel Corp)*, 872 F.2d 36, 40 (3d Cir. 1989); *Richmond Leasing Co. vs. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); see also *NLRB vs. Bildisco & Bildisco*, 465

U.S. 513, 523 (1984) (describing business judgment test as “traditional”). In the exercise of their business judgment, the Debtors have determined that the assumption and assignment of the Purchased Contracts is in the Debtors’ economic best interests because such assumption and assignment is an integral part of the sale of the Sale Assets.

32. Pursuant to §365(f) a debtor may assign an executory contract if adequate assurance of future performance by the assignee of the executory contract is provided. The Debtors have been advised that Buyer has the financial capability to satisfy any and all obligations it will incur with respect to the Purchased Contracts.

33. Debtors have filed an application with this Court seeking the entry of an order setting a hearing on this Motion and the establishment of other deadlines concerning this Motion. A copy of the Order will be provided to all parties in interest in this case.

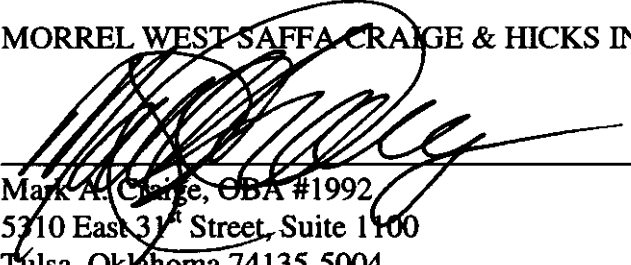
34. The proposed sale is being conducted in contemplation of a plan of reorganization in accordance with §1146(c) of the Bankruptcy Code and is not subject to any recordation or transfer tax.

WHEREFORE, the Debtors respectfully request entry of an order (i) authorizing the Debtors to sell the Sale Assets free and clear of liens, claims, interest and encumbrances to Buyer, subject to the terms of the Sale Agreement; (ii) approving the assumption and assignment of the Purchased Contracts and fixing any cure amounts thereunder, and (iii) granting such other and further relief as is just.

Dated this 16th day of May, 2003.

Respectfully submitted,

MORREL WEST SAFFA CRAIGE & HICKS INC.



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